

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 178 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI
and
Hon'ble MR.JUSTICE A.L.DAVE

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

COMMISSIONER OF INCOME TAX

Versus

GUJARAT STATE FERTILIZERS CO. LTD.

Appearance:

1. INCOME TAX REFERENCE No. 178 of 1985
MR MANISH R BHATT for Petitioner No. 1
MR JP SHAH for Respondent No. 1

CORAM : MR.JUSTICE R.K.ABICHANDANI
and
MR.JUSTICE A.L.DAVE

Date of decision: 15/01/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE R.K.ABICHANDANI)

1. The Income Tax Appellate Tribunal, Ahmedabad Bench "A" has referred the following question for the opinion of this Court in respect of assessment years 1977-78 to 1979-80 :-

"Whether, the Tribunal has been right in law and on facts in holding that the assessee is entitled to investment allowance on account of additional expenditure in the cost of plant and machinery on account of realignment of currency?"

2. It appears that, earlier, a Division Bench of this Court, noticing that there was conflict of opinion made between decisions of other High Courts and the decision of this High Court in C.I.T. v. Windsor Foods Ltd., 235 ITR 249 (Guj.), referred the matter to a larger Bench with an observation that it, prima facie, felt that the view expressed in Windsor was not in consonance with the provisions of the Act, particularly, Section 32A and 43A thereof. Now, we have the benefit of the opinion of the Full Bench which has, by its majority view, decided on 19.10.2002 that once sub-section (1) of Section 43 of the Act comes into play and the increase in liability has been taken as the actual cost within the meaning of Section 43(1) of the Act, the effect is that such adjusted actual cost has to be taken as the actual cost for all purposes other than development rebate and all allowances would have to be based on such adjusted actual cost. Therefore, the assessee would be entitled to investment allowance on the figure of enhanced actual cost. The Full Bench relied upon a decision of the Supreme Court in paragraphs 20 and 21 of its judgment in support of this view and held that the Division Bench decision in Windsor did not lay down the correct law as regards the availability of investment allowance on enhanced cost and overruled the ratio of that decision. Since the Full Bench has held that the assessee was entitled to investment allowance on enhanced actual cost, the question referred by the Tribunal for the opinion of this Court would stand answered in the affirmative, against the revenue and in favour of the assessee. The Reference stands disposed of accordingly. There shall be no order as to costs.

[R.K. ABICHANDANI, J.]

[A.L. DAVE, J.]

